IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

MFA.No. 101 of 2002(C)

OPMV.2335/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT: 2ND RESPONDENT:

NEW INDIA ASSURANCE CO.LTD.,KOTTAYAM
NOW REPRESENTED BY ITS ASST.ADMINISTRATIVE OFFICER
REGIONAL OFFICE, ERNAKULAM.

BY ADV. SRI.P.G.GANAPPAN

RESPONDENTS: CLAIMANT & 1ST RESPONDENT:
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1. JAMES JACOB, MATICHIPARAMBIL,
BANK'S STREET, CHANGANACHERRY.

2. JOSEKUTTY ANTONY, KARAKKATTU HOUSE,
MAMMOOD P.O., CHANGANACHERRY.

BY ADV. SRI.B.S.SWATHY KUMAR
SRI.JOMY GEORGE FOR R2
SRI.K.HARILAL
SRI.BINDU SREEKUMAR
SMT.LIJI J.VADAKEDOM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2007 ALONG WITH MFA NO. 504 OF 2002 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.443/2002 IN M.F.A.NO.101/2002

DISMISSED.

27.11.2007 **J.B.KOSHY, JUDGE**

K.HEMA, JUDGE

/TRUE COPY/

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.101 & 504 OF 2002

Dated 27th November, 2007

JUDGMENT

Koshy,J.

A 32 year old man sustained serious injuries in a motor accident while he was travelling in a lorry, a public carrier. It has come out in evidence that he purchased 15 barrels of coconut oil from Kochi and was carrying the same from Kochi to Changanacherry in the above lorry. He claimed compensation amount of Rs.4,50,000/- as he suffered very serious injuries like fracture of left femur, lacerated wound on scalp, deep injury on left leg muscle ruptured, injury on head and mandible etc. He was in the hospital for $1^1/_2$ months. The total amount awarded by the tribunal was Rs.1,36,222/-. It was found by the tribunal that driver of the lorry was negligent and was responsible for the accident and Insurance company which insured the lorry was directed to deposit the

amount. Insurance company filed M.F.A.No.101/2002 contending that appellant is a gratuitous passenger in a goods vehicle. Therefore compensation is not payable. It is also pointed out that even though he was travelling with his own goods in a goods vehicle, since the accident occurred prior to the amendment of the Act, Insurance company has no liability. The claimant filed M.F.A.No.504/2002 stating that the amount awarded is very low.

2. On going through the written statement filed by the Insurance company, we are of the view that there is no specific contention raised stating that because he was travelling in a goods vehicle Insurance company is not liable to pay the compensation. There is no contention before the tribunal that he was a gratuitous passenger and Insurance company is not liable to pay the amount. It is well settled law that if insurance is admitted, it is for the Insurance company to plead and prove exclusion of liability. However that burden is not discharged.

Even though coverage of Insurance was admitted, insurance policy was not produced to show that it was only an Act policy or there were limitations in the policy. No evidence was adduced to prove the contention by the Insurance company though it obtained permission under Section 170 to contest the case on merits. Claimant, the victim of the accident has no means of obtaining the details of the policy. Hence we are unable to accept the contentions of the Insurance company. We also note that just and reasonable compensation is awarded and there is no merit in the appeal filed by the claimant also. Hence both appeals are dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

prp

J.B.KOSHY, K.HEMA, JJ

M.F.A.NO.101 & 504 OF 2002

JUDGMENT

Dated 27th November, 2007